

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 621

MARTHA C. REED, PETITIONER,

vs.

PENNSYLVANIA RAILROAD COMPANY

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED JANUARY 11, 1956

CERTIORARI GRANTED FEBRUARY 27, 1956

SUPREME COURT OF THE UNITED STATES

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APPENDIX

RELEVANT DOCKET ENTRIES.

- July 23, 1953. Comp. Filed.
- July 23, 1953. Pltff. demand jury trial filed.
- July 23, 1953. Summons exit.
- July 30, 1953. Appearance for Philip Price for Defendant filed.
- Aug. 4, 1953. Summons ret. on July 29, '53 served and filed.
- Aug. 18, 1953. Answer filed.
- Aug. 27, 1953. Order to place on trial list filed.
- Oct. 28, 1953. Pltff. interrog. filed.
- Oct. 30, 1953. Def. objections to interrog. filed.
- Oct. 30, 1953. Order to place case on Argum. list.
- Nov. 16, 1953. Pltff. supplemental interrog. to defendant filed.
- Nov. 23, 1953. Argued sur defendant's objections to interrog.
- Ex Die: The court rules on the object to interrog. (order) K.
- Jan. 5, 1954. Order sur objections to plaintiff's interrog. filed (K) 1/6/54 noted and mailed.
- Jan. 20, 1954. Answers to plaintiff's interrog. and supple. interrog. filed.
- Jan. 5, 1955. Pre-trial deposition of pltff. filed.
- Jan. 5, 1955. Defendant's motion to dismiss and notice of motion filed.
- Jan. 5, 1955. Order to place case on argument list filed.
- Feb. 28, 1955. Argued sur defendant's motion to dismiss WHK CAV.
- Mar. 17, 1955. Opinion granting motion to dismiss filed (WHK).

Complaint

- Mar. 17, 1955. Judgment dismissing action filed 3/18/55 noted and notice mailed.
- Mar. 21, 1955. Plaintiff's notice of appeal filed.
- Mar. 21, 1955. Copy of clerk's notice to U. S. Ct. of Appeals; filed.
- Mar. 23, 1955. Defendant's bill of costs, filed.
- Apr. 11, 1955. Record transmitted to U. S. Ct. of Appeals.

COMPLAINT.

The plaintiff is Martha C. Reed, a resident and citizen of Paoli, Pennsylvania, who claims of the defendant herein the sum of Thirty-six thousand two hundred dollars (\$36,200.00), upon a cause of action whereof the following is a statement:

1. This action arises under the Act of Congress, April 22, 1908, c. 149, 35 Stat. 65, and amendments thereto, U. S. C. A., Title 45, Sec. 51 et seq., and further amended by the Act of Congress approved by the President of the United States on August 11, 1939, Chapter 685—1st Session of the 76th Congress, known and cited as "The Federal Employers' Liability Act," and under the Safety Appliance Acts, Title 45, U. S. C. A., Sec. 1-23 inclusive.

2. The defendant herein is Pennsylvania Railroad Company, a corporation, which was at all times herein mentioned and now is a railroad corporation duly organized under and existing by virtue of the laws of the State of Pennsylvania. The said corporation is a citizen of that

Complaint

state and is authorized to and does business in the Eastern District of Pennsylvania.

3. At the time and place hereinafter mentioned, and for a long time prior thereto, the defendant, as a common carrier, operated, by electric and steam power, trains carrying passengers, freight, express packages, baggage and foreign and domestic mail in commerce between the different states of the United States and its territories.

4. At the time and place hereinafter mentioned the plaintiff's duties, in whole or in part, were in furtherance of interstate or foreign commerce and directly or closely and substantially affected such commerce; also at the said time and place the defendant was engaged in interstate commerce between the different states of the United States or its territories, or in foreign commerce.

5. At the time and place hereinafter mentioned, the acts of omission and commission causing the injury to the plaintiff were done by the agents, servants or employees of the defendant, acting in the course and scope of their employment with and under the direct and exclusive control of the defendant, and were due in no manner whatsoever to any act or failure to act on the part of the plaintiff herein mentioned.

6. All the equipment, property and operations involved in the accident hereinafter referred to were owned by and under the direct and exclusive control of the defendant, its servants, agents or employees.

7. As a result of the accident herein referred to, the plaintiff has been obliged to expend, in and about an effort to cure himself of the pains and ills hereinafter more particularly set forth, various and divers sums of

Complaint

money for medicine and medical treatment, and will be obliged to continue to expend such sums for an indefinite time in the future, to his great detriment and loss.

8. Because of the accident herein referred to, the plaintiff has undergone great physical pain and mental anguish and will continue to endure same for an indefinite time in the future, to his great detriment and loss.

9. Because of the accident herein referred to, the plaintiff has been unable to attend to his usual and daily duties, occupations and labors, to his great detriment and loss.

10. As a result of the accident herein referred to, the plaintiff has suffered a loss and depreciation of his earnings and earning power and will continue to suffer such loss and depreciation for an indefinite time in the future, to his great detriment and loss.

11. The accident herein referred to was caused solely and exclusively by the negligence of the defendant, its servants, agents or employees.

12. On or about July 19, 1951, and for some time prior thereto, the plaintiff was employed by the defendant as a print-maker in the defendant's Thirty-second Street Building in Philadelphia, when due to the negligence of the defendant in permitting a window to remain cracked and unrepaired, the said window fell in upon the plaintiff causing the injuries more particularly hereinafter set forth.

13. As a result of the negligence of the defendant as aforesaid, the plaintiff suffered a laceration of the right

Answer of Defendant to Complaint

hand involving the nerves, tendons and muscles, requiring ten stitches, a laceration of the right arm involving the nerves, tendons and muscles, requiring seven stitches, a severe bruise under the right breast, and injury to her nerves and nervous system, some or all of which plaintiff is advised are or may be permanent.

RICHTER, LORD & FARAGE

By JOSEPH S. LORD III,

Counsel for Plaintiff

ANSWER OF DEFENDANT TO COMPLAINT.

Defendant, The Pennsylvania Railroad Company, in answer to the complaint in the above case avers:

First Defense

1. Denied.

2. Admitted.

3. Defendant admits that at the time set forth; and for a long time prior thereto, the defendant, as a common carrier, operated, by electric and steam power, trains carrying passengers, freight, express packages, baggage and foreign and domestic mail in commerce between the different states of the United States and its territories. The remaining allegations of paragraph 3 are denied.

4, 5. Denied.

Answer of Defendant to Complaint

6. Defendant admits that all the equipment and property involved in the accident hereinafter referred to were owned by and under the direct and exclusive control of the defendant, its servants, agents or employees. The remaining allegations of paragraph 6 are denied.

7, 8, 9, 10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 7, 8, 9 and 10 of the complaint.

11. Denied.

12. Defendant admits that on or about July 19, 1951, and for some time prior thereto, the plaintiff was employed by the defendant as a print-maker in the defendant's Thirty-second Street Building in Philadelphia. The remaining allegations of paragraph 12 are denied.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the complaint.

Second Defense

14. If plaintiff was injured at the time and place alleged in the complaint, defendant, The Pennsylvania Railroad Company, avers that the sole and proximate cause of the plaintiff's injuries was plaintiff's negligence.

Third Defense

15. This Court has no jurisdiction over the subject matter of this case.

N

Plaintiff's Interrogatories

WHEREFORE, defendant, The Pennsylvania Railroad Company, requests that the complaint against it be dismissed.

/s/ PHILIP PRICE
PHILIP PRICE
Attorney for defendant

PLAINTIFF'S INTERROGATORIES.

Martha C. Reed, the plaintiff in the above action, by her attorneys, Richter, Lord & Farage, Esquires, hereby makes demand that the defendant or its counsel answer the following interrogatories under oath, pursuant to Rule No. 33. These interrogatories shall be deemed continuing, so as to require supplemental answers if defendant obtains further information between the time answers are served and the time of trial:

1. Did defendant obtain from plaintiff a statement of the accident occurring on or about July 19, 1951, as a result of which he suffered personal injuries?

2. Does the statement contain facts concerning the manner, place, time or cause of the happening of the accident, or concerning the nature and extent of plaintiff's injuries therefrom? If so, state where, when, and by whom such statement was obtained, giving addresses of all parties named and indicate where and in whose possession such statement is now.

Plaintiff's Interrogatories

3. State when this accident first came to the attention of the defendant, by whom it was reported and to whom.

4. Has the defendant at any time received any medical reports, X-ray reports, etc., from any hospitals or physicians reporting on the injuries sustained by plaintiff in the accident upon which this action is based? If so, state when, where and from whom the defendant received any such reports, indicating the nature thereof (i. e., medical report, hospital report, etc.), and state the present whereabouts of such reports and the name and an address of whosoever is in possession or custody thereof. Indicate the names of the company doctors, if any, who attended plaintiff, the dates and places of such treatment, and the nature of the treatment.

5. State:

(a) Whether or not defendant has any information that the injuries, loss of earnings and/or damages alleged to have been suffered by the plaintiff in this accident, were actually the result of a prior or subsequent injury sustained in a prior or subsequent accident, or the result of disease, sickness or other causes or conditions;

(b) If so, state whether or not defendant has received any statements, oral or written, from any persons, concerning same;

(c) If defendant's answer to part (b) is in the affirmative, state where, when, by whom and from whom such statements were obtained (giving addresses of all parties named), and state the present whereabouts of these statements, giving the name and address of whosoever is in possession or custody thereof.

Plaintiff's Interrogatories

6. Has the defendant at any time obtained a statement or statements concerning the accident involved in this case from any of its employees or third parties?

7. If the answer to the preceding interrogatory is in the affirmative, state:

(a) The names and addresses of any person or persons from whom such statements were obtained;

(b) The name of each person taking such statement or statements;

(c) The date or dates such statement or statements were taken;

(d) Whether the statement or statements contain facts concerning the manner, place, time or cause of the happening of the accident, or concerning the nature of the plaintiff's injuries therefrom;

(e) The present whereabouts of the said statements and the name and address of whosoever is in possession or custody thereof.

8. Is the defendant in possession of any photographs of the window involved in this accident, the locale or surrounding area of the site of the accident, or any other matters or things involved in this accident?

9. If defendant's answer to the preceding interrogatory is in the affirmative, state:

(a) The date or dates when such photographs were taken;

Plaintiff's Interrogatories

(b) The name and address of the party taking them;

(c) Where they were taken;

(d) The object or objects or subjects or the particular site or view which each photograph represents;

(e) The present whereabouts of the photographs and the name and address of whosoever is in possession or custody thereof.

10. List the names and addresses, if known, of any persons who defendant knows or believes were witnesses within sight or hearing of the accident, other than those whose names are disclosed by answers to preceding interrogatories as having given statements.

11. State the names and addresses of plaintiff's supervisors, if any, at the time of the accident.

12. State the names, addresses and job classifications of plaintiff's fellow crew or gang workers, if any, who were working with the plaintiff at the time of the accident. State where each stood in relation to the plaintiff, what each was doing at the time of the accident and what part, if any, each played in the event.

13. State the rate of pay which plaintiff was earning at the time of the injury, and indicate whether the rate of pay for the work which the plaintiff did at the time of the injury has been since increased. If so, state the amount of increase and when it occurred.

14. According to defendant's records, has the plaintiff worked since the accident? If so, indicate whether such work is the same as that done before the accident. If not,

Plaintiff's Interrogatories

specify the type of work done since the accident and the rate of pay therefor.

15. According to defendant's records, how much time from work has plaintiff lost since this accident, computed up to the date of your answer.

16. State the total of plaintiff's earnings, according to defendant's records, for the year in which she was hurt, indicating the amount earned before and the amount earned after the injury.

17. State how much plaintiff's earnings were, according to defendant's records, for each of the two full years preceding the year of her accident.

18. According to defendant's records, how many days was plaintiff absent from work:

(a) In the year of her accident and prior to said accident;

(b) In the two full years prior to the year of the accident (except absences for holidays, vacations, layoffs, furloughs, and Sundays or relief days);

(c) Do your records indicate any reason or explanation for any of such absences, other than those excepted? If so, please indicate.

19. State whether and how often periodic inspections or examinations were made of the window involved in this accident.

20. If such inspections or examinations were made, state when and by whom the inspection was made last

Plaintiff's Interrogatories

preceding the accident and first following the accident, and whether such inspections disclosed any defect, inadequacy, or condition of disrepair, and if so, the nature thereof.

21. If records or memoranda were made of such inspections or examinations, state where and when and the name and address of the parties making such records or memoranda, the present whereabouts of the memoranda and the name and address of whosoever is in possession or custody of these records or memoranda, as respects these particular inspections or examinations.

22. When was the window involved in this accident repaired following said accident? (a) State the nature and extent of such repairs and by whom they were made.

23. Was the window involved in this accident ever repaired prior to the said accident? If so, state:

(a) The date of the said repairs;

(b) The nature and extent of such repairs;

(c) The names and addresses of those who made the repairs;

(d) If written records were made of such repairs, state by whom said records were made and the present location of copies of said records.

24. What was the location of the window involved in this accident?

25. Was the window involved herein cracked before the accident?

Plaintiff's Interrogatories

26. If the answer to the preceding interrogatory is in the affirmative, state for how long the window had been so cracked.

27. If the answer to Interrogatory No. 25 is in the affirmative, describe the said crack, giving its length, direction and location with reference to the sides, top and bottom of the window frame.

28. Describe the window involved in this accident, including in your description the dimensions of the window and the general type of window sash (e. g., vertical, sliding, casement, etc.) and number of panes in the window, etc.

29. State whether there was at or about the time of this accident a wind storm, rain storm, hailstorm or other type of weather condition involving strong winds. Specify what type of weather conditions involving strong winds, if any, occurred.

30. If the answer to the preceding interrogatory is in the affirmative, state whether any other windows in defendant's 32nd Street building were broken at or about the same time as the window involved herein. If so, specify the number and location of said windows.

31. If the answer to the preceding interrogatory is in the affirmative, state whether the other such windows which were broken at or about the same time as the window involved herein had also been cracked prior to the time of their breaking.

32. What was the general type of work being done in the department where plaintiff was employed at the time of this accident?

Plaintiff's Interrogatories

33. What specific work was assigned to the plaintiff at all times involved herein?

34. If the work done in the department wherein plaintiff was employed involved the making and/or handling of blueprints, state what kind of blueprints:

(a) If the blueprints inquired about were blueprints of railroad cars or parts of cars, state the general types of car of which this department made and/or handled blueprints; :

(b) If this department made and/or handled blueprints of other items or structures than cars, specify what other types of blueprints were so made and/or handled.

35. If this department made and/or handled blueprints of cars, state where on defendant's system these said cars were operated.

36. Give the names and addresses of all offices or departments of the defendant that did the same type of work done by the department in which the plaintiff was employed at the times involved herein.

37. What was the number of blueprints kept or stored in the department involved herein?

38. What was the number of blueprints made by the department involved herein annually at or about the times involved herein?

RICHTER, LORD & FARAGE

By

Counsel for Plaintiff

*Plaintiff's Supplemental Interrogatories***PLAINTIFF'S SUPPLEMENTAL INTERROGATORIES.**

Martha C. Reed, the plaintiff in the above action, by her attorneys, Richter, Lord & Farage, Esquires, hereby makes demand that the defendant or its counsel answer the following supplemental interrogatories under oath, pursuant to Rule No. 33. These supplemental interrogatories shall be deemed continuing, so as to require supplemental answers if defendant obtains further information between the time answers are served and the time of trial:

39. State what use was made of the blueprints on or with which the plaintiff worked, indicating where and by whom such use was made.

40. Unless already disclosed by answers to preceding interrogatories, specify whether these blueprints in the normal course of their use were sent across state lines for use by the defendant's employees. If so, indicate to what states other than Pennsylvania such blueprints were sent and the approximate percentage of blueprints that were sent to other states:

- (a) During the year plaintiff was injured;
- (b) During the year preceding plaintiff's injury.

RICHTER, LORD & FARAGE

By

Counsel for Plaintiff

*Defendant's Answers to Interrogatories and
Supplemental Interrogatories*

**DEFENDANT'S ANSWERS TO INTERROGATORIES
AND SUPPLEMENTAL INTERROGATORIES.**

Defendant, The Pennsylvania Railroad Company, makes the following answers to interrogatories propounded by plaintiff:

1. Yes.
2. Yes. Statement made to E. C. Sloan at Philadelphia, Penna., on August 24, 1951. Statement is in the custody of counsel.
3. The accident first came to the attention of the defendant on July 19, 1951. Plaintiff reported to Medical Examiner, C. J. Wickert.
4. Medical reports will be furnished in accordance with agreement between counsel.
5. Yes. See medical reports furnished in accordance with agreement between counsel.
6. Yes.
7. A statement concerning the accident was given by George D. Sprankle to C. K. Steins at Philadelphia, Penna., on August 18, 1953. Statement is in the custody of counsel.
- 8, 9. No.
10. Following is a list of those persons defendant knows or believes to have been witnesses within sight or hearing of the accident other than those already disclosed

*Defendant's Answers to Interrogatories and
Supplemental Interrogatories*

by preceding interrogatories: L. W. Bertram, 10 Hilltop Road, Plymouth Valley, Penna.; C. M. Gulliford, 201 West Avenue, Wayne, Penna.; E. D. McCloskey, 3937 Pine Street, Philadelphia, Penna.; E. J. Tedeschi, No. 7 Old Conestoga Road, Strafford, Penna.; W. A. Weir, 38 N. Lansdowne Avenue, Lansdowne, Penna.; J. F. Matteo, 412 Folsom Avenue, Folsom, Penna.; J. G. Bertulis, Jr., 7211 Penarth Avenue, Upper Darby, Penna.; A. R. Berger, No. 7 Conestoga Lane, Berwyn, Penna.; Max Seel, 113 W. Drexel Avenue, Lansdowne, Penna.; W. F. Bugg, 36 High Street, Woodbury, New Jersey; R. M. McCullough, 344 Westpark Lane, Clifton Hts.; N. J. Sprass, 623 West Lindley Avenue, Philadelphia, Penna.; L. J. Schlachter, 1917 N. 61st Street, Philadelphia, Penna.; L. A. Hansen, 4231 Baltimore Avenue, Philadelphia, Penna.; H. F. Dillman, 437 Harwicke Road, Springfield, Penna.; L. J. Seider, 453 Osage Avenue, Philadelphia, Penna.; F. H. Cambria, 2050 Mercy Street, Philadelphia, Penna.; A. T. Volpack, 111 Ripka Street, Philadelphia, Penna.; J. A. Gower, 404 Baird Road, Merion, Penna.

11. C. K. Steins, Mechanical Engineer, 15 N. 32nd Street, Philadelphia, Penna., was plaintiff's supervisor at the time of the accident.

12. Plaintiff was not working at the time of the accident.

13. Rate of pay which plaintiff was earning at time of accident was \$315.05 per month. Plaintiff received a \$10.00 per month increase effective January 1, 1952, and additional \$10.00 per month increase effective October 1, 1952, and an additional \$6.00 per month increase effective October 1, 1953.

*Defendant's Answers to Interrogatories and
Supplemental Interrogatories*

14. According to defendant's records, plaintiff has worked since the accident and is performing the same type of work.

15. From July 19, 1951, to the date of this answer, plaintiff has lost a total of 49 1/2 days from work.

16. Plaintiff's total earnings for 1951 amounted to \$3,750.60 and of that amount, \$2,055.34 was earned prior to the accident and the balance after the accident.

17. In the year 1949, plaintiff earned \$3,418.76 (including \$132.90 retroactive pay) and in the year 1950, \$3,290.02.

18. (a) In the year of her accident and prior to said accident plaintiff lost 25 days as a result of sickness or disability.

(b) In 1950, plaintiff lost 5 1/2 days from her employment as a result of sickness or disability. In 1949, plaintiff lost 2 days from her employment as a result of sickness or disability.

19. Defendant did not subject the window to periodic inspections specifically to discover defects. Window is subject to inspection daily by any employee whose duties bring him into its vicinity.

20, 21. No written records were made or kept by defendant as to the condition of the window in question.

23. No.

24. The window involved in this accident, is located in Room 515, 15 N. 32nd Street, West side of building, 5th floor.

*Defendant's Answers to Interrogatories and
Supplemental Interrogatories*

25, 26, 27. Through written statements for the accuracy of which it cannot vouch, defendant is informed that the window involved herein cracked a short time prior to the accident from top of light to bottom near center of glass.

28. The window involved in this accident was the upper sash of vertical two sash, steel frame window. Dimensions as follows: Steel sash frame—57 1/2 inches wide 43 inches high; glass—58 inches wide—40 inches high.

30. Twelve windows were broken at or about the same time as the window involved herein. Their number and location are as follows: Basement—2; 5th floor—4; 6th floor—2; 7th floor—1; 11th floor—1; 12th floor—1; 13th floor—1.

32. The general type of work being done in the department where plaintiff was employed at the time of this accident was the preparation of blueprints.

33. Plaintiff's duties at all times involved herein were, upon order, to pull Vandikes or tracings from file cabinets, take them to Print Maker, then return Vandikes or tracings to file cabinets after Print Maker finished with them.

34. The work done by other persons in the department wherein plaintiff was employed involved making and handling: (a) Blueprints of all mechanical equipment, cars, locomotives, cranes, etc.; and (b) Blueprints of all types of structures including bridges, trackage, etc.

35. The said cars depicted by the blueprints were operated over defendant's entire system.

*Defendant's Answers to Interrogatories and
Supplemental Interrogatories*

36. None. Tracings have been and can be sent to independent firms for preparation of blueprints.

37. Approximately 325,000 original tracings are on file, many of which are duplicated in Vandikes and white prints. There are 20,000 to 25,000 Vandikes and several thousand white prints on file.

38. About 2,400 original tracings are made yearly by the Mechanical Engineer's draftsmen. In addition to this many reproductions of all types of equipment and trackage are made (Blueprints, Vandikes, White Prints and Ozalids).

39, 40. Plaintiff worked with Vandikes and tracings which are kept in the files of the Mechanical Engineer in Room 515, 15 N. 32nd Street, Philadelphia, Penna., and from which blueprints are made. The blueprints made by other employees of defendant are used by defendant's employees in Pennsylvania, Michigan, New York, New Jersey, Delaware, Maryland, Washington, D. C., Ohio, Indiana, Illinois and Missouri. Approximately 67% of the blueprints are sent to states other than Pennsylvania.

THE PENNSYLVANIA RAILROAD COMPANY

By G. B. JANSEN

**COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA,**

ss:

G. B. Jansen, being duly sworn according to law, deposes and says that he is Chief Claim Agent of The

Defendant's Depositions

Pennsylvania Railroad Company, defendant in this action; that he is authorized to make this affidavit on its behalf; and that the facts set forth in the foregoing Answers to Interrogatories and Supplemental Interrogatories are true and correct to the best of his knowledge, information and belief.

/s/ G. B. JANSEN.

Sworn to and subscribed before me this
19th day of January, 1954.

/s/ Daniel J. Simonson,
Notary Public

My Commission Expires: February 23, 1957.
(Seal)

(1) DEFENDANT'S DEPOSITIONS.

Pre-trial oral examination of plaintiff, Martha C. Reed, taken at the offices of Barnes, Dechert, Price, Myers & Rhoades, 13th Floor, Packard Building, Philadelphia, Pa., on Thursday, September 10, 1953, commencing at 3:00 o'clock P. M.

Appearances:

Richter, Lord & Farage, Esqs., by Donald J. Farage, Esq., representing plaintiff.

Barnes, Dechert, Price, Myers and Rhoades, Esqs., by Gordon W. Gerber, Esq., representing defendant.

Martha C. Reed—Cross

(It is stipulated by and between counsel for the respective parties that the depositions may be (2) taken stenographically and thereafter reduced to typewriting and that signing, sealing, certification and filing be waived.)

(All objections, except as to the form of the questions, are reserved for the trial.)

MARTHA C. REED, having been duly sworn, was examined and testified as follows:

BY MR. GERBER:

Q. What is your full name?

A. Martha Cornelia Reed.

Q. What is your address?

A. 20 South Valley Road, Paoli.

Q. You are employed by the Pennsylvania Railroad?

A. Pennsylvania Railroad, Mechanical Engineer's Office.

Q. What is your job classification?

A. I am classified now as a print maker, but on account of my height, I am serving as a file clerk because I am not tall enough to reach the machines. But my rating as far as my service is concerned, is as a print maker.

Q. That controls, primarily, your rate of pay; is that correct?

A. Yes.

Q. Actually, the work you do, you say because of your (3) height, is what you would call a file clerk?

A. Yes.

Martha C. Reed—Cross

Q. Was that the position you held on July 19, 1951?

A. Yes, sir. I have worked that job for about—in the neighborhood of eight years or nine years; something like that.

Q. Just exactly what are your duties on that job?

A. Filing prints. The Mechanical Engineers' Department makes all the prints of the entire system; that is, every nut, bolt, screw, and every part that a locomotive or freight car or anything in transportation is made of.

Q. So that what you do is —

A. I file the prints. The prints are made first on a transparent material; then they are made on the same as a negative in a photographer's shop, you know —

Q. Excuse me for interrupting, but I don't think I can learn how the whole operation works. What do you, yourself, do?

A. I file those prints.

Q. And where do you get these prints?

A. From the machines. I get the orders out in the morning and the men make the prints and I re-file them in the afternoon.

Q. Well, have you a desk somewhere?

(4) A. No, I just run around the halls from file to file. I don't have a desk of any kind.

Q. Do you have any one particular place where you could say is your office?

A. No, because I just work all through the rooms.

Q. Where are these various rooms you describe?

A. We are all on the same floor.

Q. Which floor is that?

A. Fifth floor in the 32nd Street Building.

Q. And how many rooms are file cabinets in?

A. Well, the one place that I work particularly, in the negatives, is on the 5th floor, and then the next room is the blueprint department where the machines are that

the prints are made on, and they are partitions between the rooms. The drawing room and all are combined under the Mechanical Engineers Office.

Q. You work on the fifth floor of the —

A. 32nd Street Building.

Q. Please let me ask the questions and I think I will be able to understand better.

You work on the fifth floor of the 32nd Street Building exclusively?

A. Yes.

Q. How many rooms are on that floor?

(5) MR. FARAGE: If you know.

A. Well, now, they are not particularly rooms. What I mean is each division is separated with file cabinets. There's no solid walls like in here now.

BY MR. GERBER:

Q. Is there one solid room divided into various component parts —

A. That's right.

Q. —by file cabinets?

A. Yes.

Q. So that there is actually one large room.

A. Yes.

Q. That is the room in which you work; is that correct?

A. Yes.

Q. Approximately how many of these partitioned areas are there?

A. Well, in the neighborhood—where I am most of my time, there's about five sections.

Q. So that you work in approximately five of these partitioned areas which are enclosed within this one room?

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A. Yes.

Q. There are other partitioned areas but you don't usually work in them; is that correct?

(6) A. No, but my job requires me to go out into the drawing room to the draftsmen after prints; that is the largest room.

Q. Let me understand what you are saying now. Are these draftsmen in this same large room but in another partitioned area?

A. Yes. We all belong to the same division.

Q. I am trying to find out where you work and what you do.

MR. FARAGE: I think she's telling you.

BY MR. GERBER:

Q. Well, perhaps I don't understand and you are telling me.

When you have said "room" in the last statement, you meant a partitioned area?

A. Yes.

Q. You work in five of these partitioned areas and you also go into a sixth partitioned area to pick up some of these plans that you just described?

A. Yes. Well, this is what I mean by a partitioned area. There are so many file cases, head high, and they are all files on this side and that side, and that is what I mean by the partitions.

Q. Well, we have agreed, have we not, that this is one (7) large room; that within this room there are various areas —

A. Of file cases.

Q. —which are marked off by file cabinets as distinguished from walls; is that correct?

A. Yes.

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Q. That is established.

A. Yes. Then I also work —

Q. When we talk about a partitioned area or room, we mean only the partitioned area; is that correct?

A. Well, I can't say whether you will take it as I say. These here file cabinets as high as my head—that's the height of the cabinets—there is a row here and a row here and on the other side, and I have to go back and forth between all these different rows to do my job.

Q. Miss Reed, I am not trying to confuse you and I'm sure you aren't trying to confuse me. I am trying to find a language in words we can both use that will mean the same thing. Let me suggest these words. We agree this is one large room.

A. Yes.

Q. And we agree that in this room there are various areas which are marked off by file cabinets?

(8) A. Yes.

Q. And when you talk about going from room to room, you are talking about going from partitioned area to partitioned area, the partitions being file cabinets rather than walls; is that correct?

A. Yes, that's the way I work. Yes.

Q. Now, you work in approximately five of these partitioned areas?

A. Yes, in the neighborhood of five.

Q. And you said you go into perhaps a sixth one to pick up plans to carry into the file —

A. In the main room, yes.

Q. Where is the main room?

A. Right across on the side where I work only it's where the draftsmen work.

Q. And that is also a room in the sense it is separated from the rest of the room by file cabinets?

A. No, it is one large room.

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Q. The drafting room is a separate room enclosed by walls?

A. Yes.

Q. So that you go into that room by going through a door, not by walking between file cabinets; is that correct?

(9) A. That's right.

Q. Do you work in any other rooms?

A. Well, in the vault.

Q. Where is the vault?

A. That's just another partitioned off place. It's a fireproof place where tracings are kept. We have two vaults, No. 1 and No. 2 vaults, where we keep them for safety, you know, on account of fire.

Q. That is a separate room?

A. That is a separate room, yes.

Q. What does your work entail?

A. Filing it all, and if I don't have a negative —

Q. You pick up papers at one desk or partitioned area —

A. That's right, and make up the orders.

Q. What kind of orders?

A. The shop orders where they make the materials and the materials that were made and where cars are assembled and all kinds of work like that. The orders come in through the mail.

Q. Well, you pick up plans.

A. That's right.

Q. Then what do you do with them?

A. Well, these orders come in on tablets like this (indicating).

(10) Q. From where do they come?

A. From different shops on the Pennsylvania Railroad.

Q. Where do you get them?

A. They come into the main office.

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Q. When you say "main office" you are referring to the drafting room?

A. Well, the blueprint clerks are at the one end of the drafting room, and this man makes—brings out those orders to me and I fill them.

Q. You get your papers from the blueprint man in the blueprint or drafting room?

A. That's right.

Q. What is his name?

A. Mr. Stone. Mr. Wertzburg is the foreman, but Mr. Stone has charge of the orders.

Q. Mr. Stone is the man that gives you the papers?

A. Yes.

Q. What do you do with them?

A. Well, you see, those papers are all over numbers. The prints are filed in numerical order and are all numbered and I have to check on those numbers on those papers and pull out the prints accordingly and the orders go back to the blueprint room.

Q. The piece of paper you get from Mr. Stone indicates (11) to you what papers you are to take out of the file cabinet and return to Mr. Stone?

A. I make up the orders and put them in the blueprint room behind the machines for the men to work on. That's the work they are going to do for the day.

Q. Stop me if I am not right. Your job is to get a piece of paper from Mr. Stone, which is instructions to you to get a certain paper or group of papers out of a filing cabinet and to return them to some other man in the blueprint department who would then work on them?

A. That's right, the men that operate the machines.

Q. Then when the men finish working on the papers, they return them to you and you return them to the file; is that correct?

A. That's right.

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Q. At that point, do you return to Mr. Stone the paper he gave you?

A. No.

Q. That stays with the blueprint man?

A. That's right.

Q. And he does something with that?

A. And there are girls in there who check —

MR. FARAGE: Why don't you let her tell her story in her own way instead of guessing what she (12) does.

MR. GERBER: I am trying to get Miss Reed to limit herself to what she does, because I realize this is a complicated job and many people do many different jobs.

BY MR. GERBER:

Q. So, if we limit ourselves to what you do —

A. What I want you to understand in the first place, ~~these prints are the prints or forms of which people~~ follow the blueprints, the same as plans for your house or anything. These prints are pictures that the shop men follow to build the cars, freight cars and locomotives and such things as that. They come in different sizes and they are all in numerical order, and they are 6 by 8 up to—some of them are as long as 12, 15 and 20 feet long.

Q. I am trying to limit this to just what you do.

A. That's what I work on.

Q. You get a piece of paper —

A. With a number on it.

Q. This number tells you where, in which file to go to get out certain papers.

A. That's right.

Q. You get them out and take them to someone else who (13) does more work on them?

A. That's the man who operates the machine.

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Q. And he makes copies of what you gave him?

A. That's right.

Q. What are some examples of the papers you carry from the filing cabinets to the various men?

A. As I say, they run from 6 by 8 up to 12, 15, 20 feet long prints. It all depends. Now, a casting or something like that sometimes will be almost as long as that wall, and then there are rolled prints that go into a pigeon hole cabinet, and they are rolled prints. Otherwise, the others are all flat in the case and they have to be drawn out and put back according to the numbers.

Q. There are different shaped papers in different filing cabinets?

A. That's right; A, B, C, D, E & F are the sizes of prints.

Q. Are there any other persons doing the same job that you do?

A. Well, there is one girl who works on practically the same thing other than she handles the tracings on the smaller prints. I handle the large prints. She handles E and F prints, and I handle the others.

Q. What is her name?

(14) A. Louise Tucker.

Q. On July 19th, 1951, you were involved in an accident —

A. That's right.

Q. —as a result of which you brought this suit; is that correct?

A. That's right.

Q. Would you describe in your own words what happened?

A. Well, it was lunch time and I had been eating out in the drawing room. I was eating my lunch and somebody said, "Look at the hailstones" and I walked across the room and looked out the window and then I turned around in this direction (indicating), and I had a sandwich in my hand —

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MR. FARAGE: Indicating the sandwich being held in which hand?

A. Right hand. And I was cut here and cut here (indicating).

BY MR. FARAGE:

Q. Indicating you were cut on which hand?

A. My right hand.

Q. Where?

A. Here (indicating).

Q. Between the thumb and the index finger?

(15) A. That's right.

Q. And where else?

A. Up here on my arm.

Q. Indicating on the upper muscle of the arm?

A. That's right. The cut was this way (indicating).

I had seven stitches there and ten stitches on my hand.

BY MR. GERBER:

Q. What time did you go to lunch?

A. 12:25 to 1:05 is our lunch period, and it was in between that time, 12:25, around quarter of one, when the storm broke.

Q. Where were you eating your lunch?

A. At the other side of the room, and I walked across the room and looked out the window.

Q. Which room?

A. The drafting room. See, I don't have any stool or chair or anything where I work at all. There's nothing to sit down on where I work whatever and I always eat outside in the drafting room on one of the desks.

Q. Am I correct in saying you were not in the large room that is divided into partitions by filing cabinets?

A. No.

Q. But rather, you had gone into —

A. I was still in our own department.

(16) Q. —the room which you described as being occupied by draftsmen and people who make blueprints?

A. That's right.

Q. Were other people in there eating lunch, too?

A. There was a few at the time, but I don't know who they were. I know there's very few people that stay in at lunch time. They nearly all go out, and they had gone out for lunch.

Q. At approximately 12:45 the hailstorm started?

A. Yes, something like that.

Q. Had you finished eating your lunch?

A. No, I had my sandwich in my hand.

Q. You were still eating lunch?

A. Yes, and I walked to the window.

Q. Who was it that said, "Look at the hailstones"?

A. One of the drafting boys.

Q. Do you know his name?

A. Roy Bertram.

Q. When he said that, the storm had just started?

A. That's right.

Q. How many other people were in the room?

A. I don't know.

Q. Would you say fifteen or two others?

A. More than two, but I wouldn't say—I couldn't say

(17) there was fifteen.

Q. Would it be closer to six or ten?

A. Well, now, I can't tell you. I wouldn't commit myself because I haven't the least idea how many was there.

Q. But more than two and fewer than fifteen?

A. Yes, I am sure there was fewer than fifteen.

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Q. When you walked over to the window, you saw the hailstones—

A. And I turned like this (indicating) —

Q. What did you see when you looked out the window?

A. Hail about like that (indicating size of hailstones).

Q. Indicating hailstones approximately —

A. Like a walnut.

Q. —the size of walnuts?

A. Yes.

Q. Would you say you had indicated a sphere with a diameter of approximately an inch and a half to two inches?

A. Oh, I wouldn't know. I didn't pay that much attention. I barely walked over and turned around and the other window blew in and crashed from these large hailstone.

Q. How large were the hailstone?

MR. FARAGE: She told you she doesn't know.

(18) MR. GERBER: She said as large as walnuts and held up her fingers indicating that, and I am trying to get the size she indicated.

A. I said as large as walnuts.

BY MR. GERBER:

Q. You don't care to estimate how large—

A. I wouldn't have the least idea.

Q. Would you kindly let me ask the question?

Do you care to estimate the size of the sphere which you indicated?

MR. FARAGE: She's answered "No" to that.

A. No, I couldn't.

MR. FARAGE: Don't answer any more questions along this line. I will permit you to ask a question once or twice, but I won't permit you to harass the witness.

MR. GERBER: I am not harassing the witness. I asked here half of a question several times. I think the witness will have no difficulty answering my question if I ever get to ask it.

MR. FARAGE: If you will let her tell her story in her own way, you will get it much faster instead of trying to put words into her mouth.

MR. GERBER: I am not trying to put words (19) in her mouth.

A. I wouldn't have the least idea as to the size.

BY MR. GERBER:

Q. The question I want to ask you is this. You will see that it is very simple.

Do you care to estimate the size of the sphere which you indicated with your fingers a moment ago when you said you looked out the window and saw hailstones this size, indicating a circle with your two fingers?

A. No. I said the size of a walnut.

Q. You wouldn't care to estimate it any closer than that?

A. No.

Q. Did you notice any rain?

A. Well, it was storming so hard that I don't know.

Q. You don't know whether it was raining; is that correct?

A. I don't know whether it was raining or what. Of course, you couldn't see across the street other than this awful hailstones dropping on the window sill.

Q. What prevented you from seeing across the street?

A. Why it must have been rain. I don't know. I can't say whether it was raining or what it was doing, other (20) than this awful hail, and the storm. Everything was blowing right and left.

Q. Was the wind blowing?

A. It was terrific.

Q. How could you tell the wind was blowing?

A. You could hear it.

Q. You could hear it?

A. Certainly.

Q. Were there any trees around there?

A. There are no trees across the Armory there at 32nd Street, no.

Q. Was there anything else there that indicated that the wind was blowing?

A. Papers and things were flying around.

Q. Were the hailstones blowing around?

A. Sure.

Q. Was it cloudy and dark?

A. Very black.

Q. At this point, you turned and walked away.

A. I turned around and started back and the window on that side crashed in, the upper part of the window next to the one I had been looking out of. If I had been still standing there it wouldn't have affected me, but I turned and got in the sweep of it and I was 10 or 15 feet (21) away from the window when it crashed and hit me, and I didn't realize I was hurt, and I grabbed a paper towel —

Q. Had you noticed anything unusual about the window at the time?

A. No, other than that window had been cracked a long time before.

Q. Had you known the window was cracked before?

A. Yes.

Q. When did you notice, prior to this, that the window was cracked?

A. It had been cracked a long time, but I couldn't tell you how long.

Q. When you say a long time, would you say that meant ten years, ten months, ten weeks, ten days?

A. It could have been a month or so that I had noticed it.

Q. As long as a month before this accident?

A. That's right.

Q. Had you said anything to anyone about it?

A. No, because it wasn't my department.

Q. But you hadn't told anyone that this window was cracked?

A. No. I didn't have anything to do with that.

Q. Where was it cracked?

(22) A. From the corner down like this (indicating), eater-corner across the window.

Q. At the top half of the window?

A. That's right.

Q. And the crack ran from the bottom of the top half or from the top of the top half?

A. The top half of the window.

Q. Where was the crack on the top half?

A. Toward the top and it came down on a triangle down to the middle of the window.

Q. Was it from top to bottom or from the top to one side?

A. I think it ran this way (indicating).

Q. Are you indicating from the top to the side?

A. Yes.

Q. You are indicating—if I am wrong, tell me—from the top of the window to what would be the right-hand side as you face the window?

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A. That's right.

Q. Approximately how long was this crack?

A. It was clear across the window. Of course, those windows are not quite as wide as these.

Q. Would you estimate that crack to be a foot or two feet long?

(23) A. Longer than that.

Q. Two to four?

A. Well, it was from one side of the window to the other.

Q. A moment ago I thought you said it was from the top to the right-hand side?

A. It was from the upper left corner to the right-hand corner; down toward the right-hand corner. It was clear across the window.

Q. Did the top portion of the crack touch the top of the window or the left-hand side of the window?

A. I can't tell. I know the window was cracked and that's all.

Q. Did the bottom part of the crack touch the side of the window or the bottom of the window?

A. I can't tell you.

Q. You can't tell us anything about the crack?

A. No.

MR. FARAGE: She's told you it's across the entire window.

MR. GERBER: And she told us it was from the top to the side.

MR. FARAGE: Yes, all the way over.

MR. GERBER: And she told us it was from (24) side to side. Now she tells us she can't tell us anything, so we have three different ideas.

MR. FARAGE: I think the record can stand on what she said.

BY MR. GERBER:

Q. Do you know of anyone else who had noticed this window was cracked before the day of this accident?

A. The boy that worked under it knew it was cracked.

Q. What is his name?

A. Frank Willis.

Q. To whom was this accident reported?

A. Well, the assistant engineer was upstairs at the time when they were bandaging me up, Mr. Gower. I went up to the relief office to have my hand bandaged. I didn't know at the time that my arm was cut up here, but I grabbed a paper towel and went upstairs, and when I got up there I found my clothes were all soaked up there and I found I had been cut up there also. Mr. Fredericks took me to the Presbyterian Hospital to have it sewed up.

Q. What did they do at the hospital?

A. What do you mean? They just sewed me up.

Q. They sewed you up. Did they do anything else?

A. Nothing.

Q. And they discharged you from the hospital?

(25) A. They sent me home that night. They sent a man from the office to take me home.

Q. Could you tell us chronologically the various doctors you have seen since the time of this accident and what they treated you for?

A. Dr. Hamilton, the relief doctor in the building, and then he sent me down to South 17th Street for physical therapy, and that was to Dr. Hammer's office, but he was on vacation at the time and the other man—I can't tell you what his name is in the same building with him—but the nurse gave me the physical therapy and when I got through with that, why this other doctor examined

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me, my hand, and told me to go home and keep it in action.

Q. Was this other man you just mentioned also in this office?

A. At Dr. Hammer's office, but I can't tell you what his name is because I was directed to Dr. Hammer.

Q. After the treatment you received at Dr. Hammer's office by this other man, who treated you next?

A. He told me I should go home and keep it in action, put it under hot water and use a rubber ball and that would loosen it up, and I kept that up and went back to work during the day and suffered at night with the pain. (26) It was unbearable at night, and I was thinking I was going ahead doing the best thing for it and it became so unbearable I took it up with Mr. Anderson.

Q. Did you go to another doctor?

A. No, I haven't been to anybody other than the railroad has sent me to.

Q. You have seen no doctor other than the ones you mentioned so far?

A. No. Then I got in contact with Anderson and asked him what they were going to do about it.

Q. Did you go to another doctor after that?

A. Only to whom they sent me.

Q. Can you give us the names?

A. Well, at Jefferson Hospital, to Dr. Jagger.

Q. What did he do?

A. He said it wasn't nerves. He made an examination and he said it was a tendon.

Q. What did he do other than the examination?

A. That's all he did. He sent a report back that it wasn't nerves, that I should go to a tendon specialist, and he sent me to Dr. Orr, which is a tendon specialist, and he said it wasn't a tendon; he said it's the nerve and he says that nerve was caused by the scar tissue there.

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Q. Just a moment, Miss Reed. I think we can make it (27) much shorter if you will answer the question.

What did Dr. Orr do?

A. He made the examination.

Q. Did he do anything other than examine?

A. No, because he said it wasn't the tendon, and he is a tendon surgeon.

Q. Did you go to another doctor?

A. He advised me to go to Dr. Groff.

Q. What did Dr. Groff do?

A. Well —

Q. Excuse me. I don't mean to be rude, but these doctors can give us the medical language; you can tell us what they did.

A. They just made the examinations and made their decisions.

Q. There was no further treatment?

A. No.

Q. They each examined you?

A. That's all.

Q. None of these other doctors treated you.

MR. FARAGE: Until you got to Groff.

A. When I was sent to Dr. Groff Dr. Orr sat in on consultation, and that's when they sent me, on the 22nd of June, to the hospital for this operation.

(28) Q. On June 22nd of this year?

A. Of this year.

Q. On June 22nd of this year, you went to the hospital —

A. Graduate Hospital.

Q. —and who performed the operation?

A. Dr. Robert Groff.

Q. How long were you in the hospital then?

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A. Well, I went in Monday afternoon and came home Thursday, and I was off from work five weeks.

Q. After that?

A. Yes.

Q. All of these examinations have been of your right arm in two places which you indicated; is that correct?

A. That's right. When they decided to perform the operation I just had the use of those two fingers (indicating). My entire hand was paralyzed and the pain up here (indicating) was so bad at night I just had to take medicine all the time to get any sleep at all. The pain was unbearable, and as soon as Dr. Groff got hold of me he said there was scar tissue caused from where they sewed me up in the first place.

Q. But when you say "these two fingers" the record won't show which ones you indicated.

A. The two last fingers. The rest of my hand was (29) paralyzed.

Q. At the time you had the operation you had only motion in the first two fingers, the little finger and the one next to it?

A. That's right.

Q. The rest of them were paralyzed.

A. They jabbed me all over with pins and needles to find how far the nerve was in action.

Q. I notice at this point that you have regained the use of all of your fingers.

A. Yes, I have. There is feeling in my fingers now.

Q. And you have freedom of motion?

A. Yes, other than that (indicating with fingers).

MR. FARAGE: Indicating the thumb.

A. That indicates something that will never be any better, but the pain is gone.

BY MR. GERBER:

Q. Am I correct in stating at the present time the remaining results of this accident are the lack of complete motion in the thumb of your right hand that you just indicated, and, of course, the scar on your right arm?

A. That's right.

Q. Had you ever had any accidents or injuries to your (30) right arm before?

A. No, sir.

Q. Had you ever had any difficulty or trouble at all with your arm?

A. No.

Q. Had you ever been involved in any accidents?

A. No.

MR. FARAGE: Do you mean affecting the arm?

MR. GERBER: Any accidents at all.

A. No. Well, wait a minute. I was in the Bryn Mawr train wreck. I was in that train wreck and I had my back sprained, but that had nothing to do with my arm.

BY MR. GERBER:

Q. I was asking you about any accidents at all you might have had.

A. I had barely gotten back to work. That was in June after I hurt my back in that train wreck when I met with this accident.

Q. So you were involved in an accident in June of '51?

A. That's right.

Q. Had you ever been involved in any other accidents?

A. No, I have had no other accidents.

Q. Had you ever been hospitalized before?

(31) A. No, sir.

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Q. How long have you worked for the railroad?

A. Since 1924.

Q. Have you ever been off from work for any injuries or diseases or illnesses?

A. Oh, a slight cold or something.

Q. In all that time, would I be correct in saying never for any period greater than a week?

A. Yes.

Q. That would be correct?

A. Yes.

Q. Have any X-rays been taken as a result of this accident, do you know?

A. Well, Mr. Sloan sent me down to a doctor for this hand, and when I went down to see Mr. Anderson, Mr. Anderson said, "Why would he send you for X-rays like that for a cut?"

Q. So no X-rays were taken?

A. Yes. He made me have 24 X-rays taken and they couldn't find anything.

Q. How much time did you lose from work altogether as a result of this accident?

A. Well, I was off five weeks after this operation, and I guess I would be safe in saying—I couldn't (32) say positively without checking the records, when I was first hurt. I imagine I was off about five weeks that time, too.

Q. When you say "first hurt" are you talking about the accident in June or when you first got cut?

A. When I first had my injury in this arm. That was in 1951.

Q. July of 1951?

A. That's right.

Q. You would approximate that you lost five weeks in the beginning when you first were hurt, and five weeks when you had the operation?

A. Yes.

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Q. Had you been paid by the railroad during all of this time?

A. Yes.

Q. When did you return to work permanently?

A. July 27th.

Q. So you returned to work on July 27th, 1953, and have been working steadily since?

A. Well, that's after this operation?

Q. Yes.

A. Yes.

Q. Would you say your work is satisfactory now that (33) you are back at work?

A. I haven't heard no complaints about it.

Q. In your opinion are you doing your work satisfactorily?

A. I am doing the same thing.

Q. You are doing the same work in the same way you had done it before?

A. Yes. Of course, when I first got back I was terribly sick and my nerves had been so shattered by evening I was practically worn out, but I was doing my eight hours' work.

Q. And you were doing your work satisfactorily?

A. That's right.

Q. How many days would you say you felt this tired feeling after work?

A. About two weeks after I got back.

BY MR. FARAGE:

Q. From the operation, you mean?

A. That's right, when I returned permanently to work.

BY MR. GERBER:

Q. By the way, wasn't this the same storm where the Presbyterian Hospital had part of it blown in?

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A. That's right. The flue was blown down in one of the—I think one of the heart wards. It was terrible.

Q. So on this very same day when you went up to the (34) hospital; part of the hospital had been blown down?

A. That's right. They were in awful shape when I got up there—Mr. Fredericks took me up there—and they couldn't get the blood stopped. I was bleeding badly and they got a doctor as fast as they could, but the corridors were lined on both sides with patients.

Q. And you saw these patients?

A. Yes.

Q. Did you see part of the building that was pushed over at all?

A. No, they got me into a room, and a short time after they got me into the room they brought in a woman who had been bumped with a street car or automobile and she was making so much fuss. I couldn't tell you what, but of course, that was no good for the condition I was in.

Q. The entire hospital was in a state of confusion?

A. You never saw such a place, and the only thing they did to me, they jabbed me with novocaine. They didn't give me nothing to relieve the shock; they just give me a novocaine local. That's the way they sewed me up and then they sent me home.

Q. Am I correct in saying that the only doctors you have gone to were the doctors the railroad sent you to?

A. That's right.

(35) Q. And the railroad has taken care of all those bills?

A. That's right, other than the train wreck. They didn't take care of that one yet. They said they would pay it, but when I decided to pay off.

Q. As a result of this accident, then, you haven't had any medical expenses of your own?

A. No, they have taken care of that.

Martha C. Reed—Direct

Q. I suppose that you lead a normal life at the present time; as normal as you had led before?

A. No, indeed.

Q. No?

A. No, indeed. When I get out of eight hours of work I go home and rest. I am not fit to go to any social affairs or anything else because I've got to be prepared for the next day.

Q. That's as a result of being tired?

A. Nervous strain; yes.

MR. GERBER: That's all.

BY MR. FARAGE:

Q. Did you have that nervous strain before this accident?

A. No, I never lost a day's work for sickness or anything.

(36) Q. Now, you said you were having your lunch in this drawing room. Where do you ordinarily have your lunch?

A. I always sit at this man's desk.

Q. Did your boss know you had your lunch there every day?

A. I would say so, because the chief clerk always eats on the other side of the room and I have been eating there for years.

Q. Has anyone ever told you you can't eat there?

A. No.

Q. Is there anywhere else you can eat?

A. If I go over to another girl's department.

Q. Another department?

A. Yes.

Q. Now, you mentioned these prints. What are these prints used for, do you know?

Martha C. Reed—Direct

A. To build the cars, the same as a blueprint for a house.

MR. GERBER: Mr. Farage asked you if you know.

A. That's what I am trying to tell him.

BY MR. FARAGE:

Q. You do know?

A. Certainly.

(37) Q. Tell us what they are used for.

A. For building the cars, freight cars, locomotives, Diesels and all. We have all the blueprints for every piece of equipment that is put onto a locomotive.

Q. And where are these things sent?

A. To the shops.

Q. And where are the shops?

A. We have shops in Wilmington, shops in Pittsburgh, shops in Altoona. The main shops are in Altoona, Columbus, Fort Wayne.

Q. Indiana, you mean?

A. Yes, sir. They go over the entire—as far as the Pennsylvania Railroad is concerned; Washington—any place that the Pennsylvania runs, we send them prints.

Q. Now, you mentioned going to look out of a window just before this accident. Was that the window that broke, the one you were looking through?

A. No, it was the one next to it.

Q. Next to it. Putting yourself in the position where you were looking out of the window, was it the window to the left or to the right of the one you were looking through that eventually crashed?

A. The one to the left.

Q. As you were looking out; is that right?

(38) A. That's right.

Martha C. Reed—Direct

Q. How much space is there between the windows at that point approximately, if you can estimate that?

A. Well, I would say —

Q. How much wall space between the windows?

A. —Four to five feet.

Q. Now, after you turned around to leave, in which direction did you go; towards the windows that finally broke or away from that window?

A. No, I was on my way back. I was going out this direction (indicating).

Q. In the opposite direction from the wall where the windows were?

A. That's right, I was going back to the table where I had been eating lunch.

Q. How far would you estimate you walked from the window you were looking through?

A. Ten to fifteen feet.

Q. And that window was four or five feet away from the other window?

A. That's right.

Q. And that would be a total of how many feet all together?

A. Well, what I mean, see, the windows were just like these two here (indicating), but there was a bigger space (39) between them.

Q. And you walked —

A. I just turned around like this (indicating) and I was going back this way (indicating).

Q. How many steps had you taken?

A. 12 to 15 feet.

Q. From the window that you had been looking through?

A. From the one where the window came in on me. See. I had turned and I was in this position (indicating) when it blew in past me.

Q. In other words, your back was not to the window?

A. No, I wasn't quite turned around.

Martha C. Reed—Direct

Q. You were in the process of turning.

A. I was more on an angle, see.

Q. You mentioned the glass fitting you between the thumb and your index finger and also on the upper part of the arm. Was there any other part of your body affected?

A. I was struck here (indicating).

Q. Indicating directly under the right breast.

A. And the upper abdominal region. I had a black and blue mark about that wide (indicating).

Q. Indicating about three inches?

A. In the neighborhood —

(40) MR. GERBER: It looks like an inch and a half.

BY MR. FARAGE:

Q. Show us again with your hand.

A. (Witness indicates on her body.)

Q. Which finger are you using?

A. The middle finger.

MR. GERBER: It looks to me the size of the hail stones.

MR. FARAGE: Would you stop being funny. Would you agree that is about three inches?

MR. GERBER: Approximately two and a half to three inches.

BY MR. FARAGE:

Q. How long did you have that bruise?

A. Well, several weeks.

Q. When did you first discover it?

Martha C. Reed—Direct

A. That night after I got home from the Presbyterian Hospital.

Q. When did you first call it to the attention of any physician?

A. Well, the next time I went in I showed it to him and he laughed at me, and I said, "I better have an X-ray because it might affect the ribs" and he said, "Oh, that's (41) only the soft part of the abdominal region" and he said, "You'll live through that."

Q. Following this accident, were you able to do your work at home?

A. No, I had to have my girl friend and sister to help me. I had everybody in the country helping me.

Q. What expense was entailed in having this help?

A. Well, I had to feed them and I had to have my laundry sent out.

Q. How long?

A. Well, the duration of the five weeks both times.

Q. Both five-week periods, you mean?

A. That's right.

Q. Can you estimate the total expense of the laundry you had to pay?

A. Well, it varied. Some weeks, \$2, and some weeks it wasn't quite that much. In the neighborhood of \$2 a week.

Q. And how much do you estimate the extra food cost you to feed these people who were helping you?

A. Well, what food you have to buy for the second person when you are living alone. You know it takes a lot more for two than for one.

Q. Can you estimate the total for those ten weeks?

(42) A. In the neighborhood of \$40 to \$50.

Q. Did you have to pay them anything of any kind?

A. Well, I bought them things for staying with me.

Q. How much did you spend in the way of gifts?

Martha C. Reed—Direct.

A. Well, my sister, I bought her a dress, and the other girl friend, I bought her bedroom slippers. She was out of them and I thought it would be nice to get them for her.

Q. Can you estimate the expense that you had for the gifts?

A. Well, about \$15.

Q. Now, how did you get to and from the doctors and hospitals after this accident?

A. Well, I came in on the train to the Suburban Station and took a taxi down to the doctors, and the same way up to the Presbyterian Hospital until I was able that I could go on the trolley, and then I took the trolley.

Q. Can you estimate the cost of your trolley and taxi bills, approximately, for the ten-week period or whenever it was that you went to the doctors and hospitals?

A. Well, I would say \$5 each time would cover it.

Q. Can you give me a total figure; the approximate amount you spent to go —

A. Both times?

(43) Q. All the time you took cabs and went on the trolley.

A. Ten to twelve dollars.

Q. Now, you were talking about the pain you had following the accident. How long did that pain continue?

A. Well, it was going on for about, I would say in the neighborhood of a year, and getting worse all the time.

Q. When did you first get relief from the pain?

A. After Dr. Groff operated on this arm. After he loosened the nerve.

Q. Which doctor made that scar there (indicating)?

A. This one?

Q. Yes.

A. Dr. Robert Groff.

Q. Did you ever have that scar there before?

A. Oh, no.

Martha C. Reed—Direct

Q. And that scar is about five and a half, six inches long?

MR. GERBER: I think that is approximately that, yes.

BY MR. FARAGE:

Q. And it is approximately $3/8$ or a quarter of an inch —

A. I had twelve stitches in there.

Q. I believe you said you had stitches between the (44) thumb and the forefinger.

A. Yes, I had ten stitches here.

Q. Are these marks I am pointing to part of the stitches?

A. Yes.

Q. How, if at all, have they affected the movement of your thumb?

A. Well, of course, my thumb is stiff there.

Q. On which joint is it stiff?

A. It's stiff on both. See, I can put this one down, but I can't —

Q. You can't bend your thumb down to your hand?

A. No. It's stiff that way, but it's free of pain now. Before, the pain was unbearable in there and the palm of my hand was sore all the time until Dr. Groff performed this operation, and I was sore up in this section of my arm.

Q. Indicating over the right elbow, in the back.

A. I forget the nerve he called it is there, and I couldn't put my elbow on the table like that at all.

Q. Now, you mentioned that you had pins or needles stuck into your hand. Over what parts of your hand did they do that?

A. Clear back to here (indicating).

Martha C. Reed—Re-cross

Q. Starting from where?

(45) A. The fingers.

Q. The tips of the fingers?

A. That's right, and up through here.

Q. Indicating over the palm of the hand.

A. To find where I had sensation.

Q. And where did you have sensation?

A. Only to here, and it wasn't a hundred per cent.

Q. Only in the last two fingers?

A. That's right.

Q. And the rest had no sensation?

A. That's right.

Q. Was it all the way back?

A. That's right. And the pain in here (indicating) was unbearable.

Q. Indicating over the thumb area?

A. That's right.

MR. FARAGE: I have no further questions.

BY MR. GERBER:

Q. Were there any shades or venetian blinds on any of these windows?

Q. Venetian blinds, but they are always up.

Q. Were they up on the day in question?

A. Yes.

Q. Do you know if there was any other damage done in (46) the building at all?

A. There was two other windows broken.

Q. Which windows?

A. In the blueprint department where the machines are and I think on the 6th floor the building supervisor told me of it, but you can't contact him because he died with a heart attack, Mr. Good.

Q. The pains you were describing were the ones that continued up until Dr. Groff made the operation?

Martha C. Reed—Re-cross

A. That's right.

Q. When was that operation?

A. The 22nd of June of this year.

Q. Of 1953?

A. That's right.

Q. There are places to eat outside of the building; there are none in the building where you work; is that correct?

A. You mean lunch counters?

Q. That is correct.

A. If you go out —

Q. This is 32nd Street.

A. Linton's is the closest, but you can never get in there, so I carry my lunch from home.

Q. These blueprints and papers that you work with, you (47) don't send them out, do you?

A. No.

Q. You give them to the men who work with them and they do what is necessary?

A. I put them behind the machines where they operate the machines.

Q. From then on, they do the work?

A. They go through the work and they have kids in there cutting them out with scissors and sorting them; that is checking them out for the different shops, and there's another girl who performs the mailing operation.

Q. Once you put them in the blueprint room —

A. I don't have anything more to do with the machines and the prints are made and ready to come back to me for refiling.

Q. By the way, did the window you were looking through break?

A. No.

Q. Did any other window in that vicinity break?

A. No.

Defendant's Motion to Dismiss

Q. You don't know what the condition of the other widow was that broke?

A. No.

Q. Were these windows all shut? (47a)

A. Oh, yes.

MR. GERBER: I have nothing further.

(Hearing concluded at 3:50 o'clock P. M.)

DEFENDANT'S MOTION TO DISMISS.

DEFENDANT, THE PENNSYLVANIA RAILROAD COMPANY, moves the Court to dismiss this action and in support of its motion assigns the following reasons:

1. Plaintiff's complaint alleges that she suffered personal injuries during her employment, as a "print maker," by defendant.

2. There is no diversity of citizenship between the parties and federal jurisdiction is claimed by plaintiff solely on the basis of the Federal Employers' Liability Act and Safety Appliance Act.

3. Plaintiff's deposition and defendant's answers to plaintiff's interrogatories show that plaintiff's duties were not in furtherance of interstate or foreign commerce nor did they in any way directly or closely and substantially affect such commerce. On the contrary, plaintiff's sole

Notice of Motion to Dismiss

duties were those of a file clerk in the office of the Mechanical Engineer in defendant's, 32nd Street Building in Philadelphia, Pennsylvania, where she allegedly suffered injury during her lunch hour.

4. On the basis of the undisputed facts it appears that plaintiff's claim is not encompassed within the terms of the Federal Employers' Liability Act or the Safety Appliance Acts and this Court has no jurisdiction over the subject matter of the action.

WHEREFORE, the Pennsylvania Railroad moves the Court to dismiss this action.

/s/ PHILIP PRICE,
Attorney for Defendant.

NOTICE OF MOTION TO DISMISS.

Richter, Lord and Farage
121 South Broad Street Building
Broad and Sansom Streets
Philadelphia 7, Pennsylvania

Please take notice that the undersigned will bring the above motion on for hearing before this court, United States Courthouse, Philadelphia, Pennsylvania, at the next argument list.

/s/ PHILIP PRICE
Attorney for Defendant,
The Pennsylvania Railroad Company

Order—[Opinion] Sur Motion to Dismiss

ORDER.

This cause came on this day to be heard as to the motion to dismiss duly served and filed herein.

Whereupon after hearing arguments of counsel for the respective parties, and on due consideration thereof.

It is ordered that plaintiff's action be and it is hereby dismissed at plaintiff's costs.

, 1955.

J.

[OPINION] SUR MOTION TO DISMISS.

Before Kirkpatrick, Ch. J.:

The plaintiff is suing, under the Federal Employers' Liability Act, for injuries received when a window in the drafting room of the defendant's office building where she was employed was blown in during a windstorm.

Her duties are as follows: She is handed an order to remove certain papers* from a filing cabinet. She gets them and gives them to a man in the blueprint department. When he has used them to make blueprints from, he returns them to her and she replaces them in the filing cabinet. These are her only duties. To this may be added the fact that the blueprints were of "every

*In her deposition, she referred to these papers as "prints" but it is clear from the context that they were not blueprints, but drawings on transparent material from which blueprints were made.

Order [Opinion] Sur Motion to Dismiss

part that a locomotive, freight car, or anything in transportation is made of—and that the blueprints were used to build car.” They were sent over the entire system. Orders would come through the mail for them from various parts of the system.

It will be noted that the plaintiff had no contact with the blueprints, was not required to pick them up, carry them or touch them. The only contact she had with the materials or equipment of the Engineering Department was taking out and returning to the files the tracings from which the blueprints were made.

While the plaintiff’s duties brought her a trifle nearer to furthering or substantially affecting interstate commerce than did those of the plaintiff in *Holl v. Southern Pac. Co.*, 71 F. Supp. 21, she was much further away than the plaintiff in *Straub v. Reading Company*, C. A. 3, March 10, 1955, which latter case the Court of Appeals stated was “definitely a borderline case.” In the *Straub* case the Court of Appeals cited and discussed the *Holl* case, and appeared to approve of the result and the reasoning of that decision.

I am of the opinion that the duties of this plaintiff are not in furtherance of interstate commerce and do not directly or closely and substantially affect such commerce.

The motion to dismiss will be granted.

Judgment—Plaintiff's Notice of Appeal

JUDGMENT.

BEFORE KIRKPATRICK, J.:

AND NOW, TO WIT: March 17th, 1955, in accordance with the Opinion of the Court granting defendant's motion to dismiss, it is ORDERED that the above action be and the same is hereby Dismissed, with costs.

BY THE COURT:

ATTEST:

s/ ROLAND J. GREENWOOD
DEPUTY CLERK

FILED

Mar. 17 1955

LEO A. LILLY, Clerk

By G. Dpty Clerk

PLAINTIFF'S NOTICE OF APPEAL.

AND NOW, to wit, this day of March, 1955, the plaintiff above named, MARTHA C. REED, by her attorneys, Richter, Lord and Farage, Esquires, hereby gives Notice of Appeal to the Court of Appeals for the Third Circuit from the Order of the United States District Court for the Eastern District of Pennsylvania, entered on March 17, 1955, entering judgment dismissing action with costs.

RICHTER, LORD & FARAGE.

By

Counsel for Plaintiff.

Designation of Record on Appeal

DESIGNATION OF RECORD ON APPEAL.

Appellant designates the following portions of the record to be contained in the Record on Appeal in the above entitled case:

1. Relevant docket entries.
2. Complaint.
3. Answer of Defendant to Complaint.
4. Interrogatories Propounded by Plaintiff for Answer under Rule No. 33.
5. Supplemental Interrogatories Propounded by Plaintiff for Answer under Rule No. 33.
6. Defendant's Answers to Interrogatories and Supplemental Interrogatories.
7. Depositions of the Plaintiff taken by the Defendant on Thursday, September 10, 1953, at 3:00 P. M.
8. Defendant's Motion to Dismiss.
9. Opinion and Order of the Court dated March 17, 1955.
10. Notice of Appeal to the United States Court of Appeals for the Third Circuit.
11. This Designation.

RICHTER, LORD & FARAGE.

By

Counsel for Appellant-Plaintiff.

[fol. 61] STIPULATION FOR EXTENSION OF TIME FOR FILING
BRIEF (Omitted in Printing)

[fol. 62] ORDER GRANTING LEAVE TO FILE, REPLY BRIEF OUT
OF TIME (Omitted in Printing)

[fol. 63] MOTION FOR LEAVE TO FILE REPLY BRIEF OUT OF
TIME (Omitted in Printing)

[fol. 64] UNITED STATES COURT OF APPEALS FOR THE THIRD
CIRCUIT

No. 11,600

MARTHA C. REED, Appellant,

v.

PENNSYLVANIA RAILROAD COMPANY

Appeal from the United States District Court for the
Eastern District of Pennsylvania

Argued October 7, 1955

Before Biggs, Chief Judge, and Maris and Goodrich,
Circuit Judges

OPINION OF THE COURT—Filed November 17, 1955

By GOODRICH, Circuit Judge:

This case involves the application of the Federal Employers' Liability Act¹ and its 1939 amendment.²

The plaintiff was injured when a window in the Thirty-Second Street office building of the Pennsylvania Railroad

¹ 35 Stat. 65 (1908), as amended, 45 U. S. C. § 51-60 (1952).

² 53 Stat. 1404 (1939), 45 U. S. C. § 51, 54, 56, 60 (1952).

blew in upon her during a storm. She was at the time engaged in her work for the Pennsylvania. Her job was to serve as custodian of the files of master sheets from which blueprints were made. The subject matter of the blueprints was any part of locomotives, freight cars or other things used in the business of railroading. When an order [fol. 65] came from some point on the railroad's system asking for a blueprint of one of the tracings in the file, it was plaintiff's task to find the tracing there and take it to the blueprint maker, returning the tracing to the files when the blueprint maker was through with it. There is no substantial dispute on the facts. The sole question involved in the case is whether this plaintiff, when injured during the performance of her duties for the railroad, is within the scope of the Federal Employers' Liability Act and its amendment.³

The language which must be looked at is that of the 1939 amendment to the statute. The history of the original statute of 1906 and its 1908 successor does not need to be discussed at length here. The 1906 act was considered by the Supreme Court to have gone too far and was declared unconstitutional.⁴ The 1908 statute was designed to meet the constitutional difficulties which the Court had considered in the 1906 act.⁵ Many cases were decided under the 1908 act. They can be summarized sufficiently accurately for the discussion here by saying that what was required was "on the spot" participation in transportation.⁶

The 1939 amendment was designed to enlarge the cov-

³ Answering this question in the negative, the court below granted defendant's motion to dismiss. *Reed v. Pennsylvania R. R. Co.*, Civil No. 15591, E. D. Pa., March 17, 1955.

⁴ The Employers' Liability Cases, 207 U. S. 463 (1908).

⁵ Second Employers' Liability Cases, 223 U. S. 1, 51 (1912).

⁶ See, e. g., *Shanks v. Delaware, Lack. & West. R. R.*, 239 U. S. 556, 558 (1916), where the test was held to be whether "the employe at the time of the injury [was] engaged in interstate transportation or in work so closely related to it as to be practically a part of it"

erage of the act.⁷ How much did it enlarge it? Mr. T. J. McGrath, General Counsel for the Brotherhood of Railroad Trainmen, said in advocating its adoption:

"Now if this amendment that we propose is put into the act it will, to a very large extent, wipe out the obscurity and the difficulty that now exists in attempting to determine when a man is or is not engaged in inter-[fol. 66] state commerce. *Its application will be confined, of course, to the character of employees now covered by the present act . . .*" (Italics ours.)

The pertinent language of the amendment [53 Stat. 1404 (1939), 45 U. S. C. § 51 (1952)] says:

"Any employee of a carrier, *any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce* as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter." (Italics ours.)

It is to be noted that the two clauses are in the disjunctive. Each contains language from which one can get out as much as he cares to put in it. Take the word "furtherance," for instance, in the first clause. If one looks up furtherance in the dictionary he finds it is defined as "the act of helping forward," "promotion," "advancement," "progress."⁸ It is quite clear, is it not, that a literal dictionary application of the word will sweep all employees of interstate railroads into the group covered by the statute. Take the copy writer who is penning an advertisement

⁷ Robinson v. Pennsylvania R. R. Co., 214 F. 2d 798, 799 (3rd Cir. 1954).

⁸ Hearings Before a Subcommittee of the Senate Committee on the Judiciary, 76th Cong., 1st Sess., on S. 1708, at 8 (1939).

⁹ Webster, New International Dictionary (2d ed. unabridged, 1941).

of the beauties of travel on the Broadway Limited on its trip from New York to Chicago and who suffers injuries when his desk chair collapses. Certainly the very object of his word painting is the promotion of more passenger business for the Pennsylvania on its crack interstate train. The same thing is true, is it not, of the printer who sets up the type or tends the press on the timetables for the Pennsylvania's interstate trains. His product is to help business by telling passengers when to get on trains and when to get off. Yet all this is a far cry from transportation [fol. 67] itself; ¹⁰ as much so as the typist in the president's office who writes a letter on a railroad matter, or the clerk who makes out the checks for the treasurer to sign.

If "furtherance" means in this statute everything that its dictionary listings include, the second clause of the section is meaningless repetition. The whole field has been covered already. In view of the constitutional difficulties

¹⁰ Relying on *McFadden v. Pennsylvania R. R. Co.*, 130 N. J. L. 601, 34 A. 2d 221 (1943), appellant argues that under the amendment the employee's relationship to interstate commerce, rather than interstate transportation, is controlling. Yet she fails to point to any effect which her duties might have had on an aspect of interstate commerce other than interstate transportation. Indeed the interstate commerce involved in railroading is transportation. The Senate committee report indicates that the attention of the legislators was on transportation and transportation employees.

"This amendment is intended to broaden the scope of the Employers' Liability Act so as to include within its provisions employees of common carriers who, while ordinarily engaged in the transportation of interstate commerce, may be, at the time of injury, temporarily divorced therefrom and engaged in intrastate operations.

"The preponderance of service performed by railroad transportation employees is in interstate commerce. As to those who are constantly shifting from one class of service to another, the adoption of the amendment will provide uniform treatment in the event of injury or death while so employed." S. Rep. No. 661, 76th Cong., 1st Sess. 2, 3 (1939).

which the legislators found in the "affect" phrase, and the limitations they placed upon it, to be discussed in a moment; it is incredible to conclude that they were intending a scope for the first clause which is as broad as all out of doors. It is much more likely that the second clause is the broader and that "furtherance" was meant to cover those in the actual business of transportation itself¹¹ and the second clause was to cover the fringes.

We come then to the second clause in the amendment which brings in an employee whose duties either "directly" or "closely and substantially" affect interstate commerce.

This language had a very interesting legislative history. The first proposal made in the Senate bill was to have the [fol. 68] coverage of every employee whose work "in any way affected" interstate commerce. This was later modified to meet what was at the time thought to be a constitutional difficulty and the "directly" or "closely and substantially" modification appeared in the final bill.¹² That a broader reading of the then recently decided Labor Relations Act case would have indicated to the draftsmen that

¹¹ It would appear that the "furtherance" clause was included to codify certain holdings under the 1908 statute. See, e. g., *Hines v. Wicks*, 220 S. W. 581 (Tex. Civ. App. 1920), where it was held that an employee hauling out of state baggage from a train to a baggage room was furthering interstate transportation and within the limited coverage of the 1908 act. See also, *Antonio v. Pennsylvania R. R. Co.*, 155 Pa. Super. 277, 38 A. 2d 705 (1944).

¹² During the hearings, Senator Austin said, in support of his motion to make the substitution:

["Directly" or "closely and substantially"] "occur and recur in many cases of recent date as defining what kind of effect on interstate is comprehended by the commerce clause of the Constitution"

[They embody] the law as it is interpreted by the Supreme Court of the United States in *National Labor Relations Board against Jones & Laughlin Steel Corporation* [301 U. S. 1, 37 (1937)]; in the Bituminous Coal Conservation Act of 1935, in connection with N. R. A. Codes, and in

a constitutional difficulty did not exist,¹³ is immaterial. They did not so interpret it.¹⁴ Instead they left to courts the problem of what is "directly" or "closely and substantially."

We need not worry much about the "directly" part of the clause. What is direct is not entirely sun-clear but is much easier to categorize than the second phrase, "closely and substantially."

In trying to decide what these words mean one is immediately reminded of the trackless maze of "proximate" cause questions in the law of Torts. The words are not capable of precise definition and it is likely they were not meant to be. Here was left an area for courts to deal with [fol. 69] sets of facts as they arose and to give an interpretation which would not push the act so far as to encounter constitutional difficulties.

The plaintiff urges that an employee's occupation closely and substantially affects interstate commerce if that employee's activities are such that without it interstate commerce would stop or be interrupted. From that it is argued that if Miss Reed failed to bring an ordered tracing from the file to the blueprint maker, the print for the locomotive wheel would not get to the machine shop; if it did not get to the machine shop, the repairs would not

Carter versus Carter Coal Co. [298 U. S. 238 (1936)], and others" *Hearings, supra*, note 8, at 58, 64.

Another noteworthy change in the original bill occurred during the Senate hearings. The first proposal would have included within the coverage of the statute "Any employee . . . whose duties . . . shall be in any degree incidental [to interstate commerce] . . ." *Hearings, supra*, note 8, at 2. This clause, which might well have extended the applicability of the statute beyond the "directly or closely and substantially affect" phrase, was eliminated from the final bill, apparently because of the constitutional difficulties thought to be involved. See *Hearings, supra*, note 8, at 64.

¹³ In *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937), the Court held constitutional a statute which on its face covers activities merely "affecting" interstate commerce.

¹⁴ See note 12, *supra*.

be made; if the repairs were not made, the locomotive or car could not run. If the locomotive or car could not run, interstate commerce would be, to that extent, interrupted. And if enough such omissions occurred, transportation on the great Pennsylvania system would grind to a dismal halt. Now of course that is true. But it is equally true that if the messenger boy who was supposed to pick up the letters containing the blueprints, addressed to the various shops throughout the railroad system, failed to pick them up and mail them, the same thing would happen. One is reminded of the old rhyme "for want of a nail the shoe was lost" and its dire chain of catastrophe.

We think it just as well if we do not try to lay down a litmus test which will give a red or blue reaction to all possible sets of fact. We think here that we are being asked to apply the act in a situation which would take us further than any case we have seen. We said in *Straub v. Reading Company*, 220 F. 2d 177, 183 (3rd Cir. 1955), that we had a "borderline" case in a matter which involved an assistant chief timekeeper whose responsibility was to see that employees were properly paid and were not allowed to work more than sixteen consecutive hours. That is closer and more substantial than the plaintiff's connection here.¹⁵ [fel. 70] As we remarked in *Shaw v. Monessen Southwestern Ry. Co.*, 200 F. 2d 841, 844 (3rd Cir. 1953), we should be careful not to extend this statute too far. If a plaintiff can prove negligence he may be better off than he would be under workmen's compensation law. But if he cannot, he gets nothing. Cf. Pa. Stat. Ann. tit. 77, § 431, § 461 (1952). The hardship of denying recovery to one who was injured but who cannot show the required lack of care on the part of the employer is readily apparent.

We think both from the legislative history and the course of decision that we should not extend the application of the statute to cover this case.¹⁶

The decision of the district court will be affirmed.

¹⁵ Cf. *Holl v. Southern Pac. Co.*, 71 F. Supp. 21 (N. D. Cal. 1947), where it was held that the act did not cover a clerk filling out forms in a freight claims department.

¹⁶ We do not see that the citation of cases on the application of the Fair Labor Standards Act, 52 Stat. 1060 (1938),

Brees, Chief Judge, dissenting:

The plaintiff was employed in a department of the defendant Railroad where approximately 325,000 original tracings are on file. These tracings are master prints which cover "all mechanical equipment, cars, locomotives, trains, etc., and all types of structures including bridges, trackage, etc." used or maintained on the defendant's interstate system. Blueprints are made from the master prints. It was the duty of the plaintiff, from time to time, to remove master prints from the files, take them to another employee who [fol. 71] would blueprint them, and return them to the files. The blueprints would then be sent to various points.

The majority opinion seems to differentiate between office workers and employees actually engaged in transportation, and also between the relative importance of employees' positions as affecting transportation. Such an interpretation does not seem to be in accordance with the 1939 amendment to the Federal Employers' Liability Act, 45 USCA § 51, 53 Stat. 1404. The duties of the plaintiff, like those of everyone else employed in the same department, furthered interstate commerce. It should be noted that a disjunctive "or" follows the first semi-colon of the amendment and, if the statute be read literally, as I think it must, furtherance of interstate commerce suffices to bring

as amended, 29 U. S. C. § 201-219 (1952), is helpful. The test there is whether an employee is engaged in commerce or in the production of goods for commerce. Cases cited by appellant, *e. g.*, *Martino v. Michigan Window Cleaning Co.*, 327 U. S. 173 (1946), involve the admittedly extensive phrase, production of goods for commerce, quite a different question from what we have here. In *Overstreet v. North Shore Corp.*, 318 U. S. 125 (1943), the Court held that, when construing the "engaged in commerce" clause under the Fair Labor Standards Act, cases interpreting its counterpart under the Federal Employers' Liability Act, before the 1939 amendment, were helpful. Contrary to appellant's suggestion, we are not required by this holding, when construing the amended Liability Act, to give weight to cases interpreting the "production of goods" phrase under the Fair Labor Standards Act.

an employee within the purview of the amendment: it is not necessary that that employment "directly or closely and substantially" affect interstate commerce. As was pointed out by the Superior Court of Pennsylvania, 154 Pa. Super. 129, 132, 35 A. 2d 603, 605 (1944), the amending language "is very comprehensive, so inclusive indeed that most railroad employees come within its scope." Such a result may be unfortunate but seems to have been the intention of Congress.

I would reverse the judgment of the court below.

[fol. 72] UNITED STATES COURT OF APPEALS FOR THE THIRD
CIRCUIT

No. 11,600

MARTHA C. REED, Appellant,

vs.

PENNSYLVANIA RAILROAD COMPANY

On Appeal from the United States District Court for the
Eastern District of Pennsylvania

Present: Biggs, Chief Judge, and Maris and Goodrich,
Circuit Judges.

JUDGMENT—November 17, 1955

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

/ Attest:

Ida O. Creskoff, Clerk.

November 17, 1955.

[fol. 73] MANDATE (Omitted in Printing)

[fol. 74] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 75] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 27, 1956

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. The case is transferred to the summary calendar and advanced and assigned for argument immediately following No. 257.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7613-3)